1943

File No. University II/43

Legal Deptt.

B BRANCH

Subject:—

Rules and Notifications under the Bombay University Act, 1928.

File No. Univers II/43

463-B

Gen. 194 e.

R.I.No.9119 dated 15-9-43.

Submitted.

2. The papers relate to certain amendments of the Statutes made by the Senate under section 33 of the Bombay University Act, 1928. In this connection the D.P.I., Poona, is not in favour of the amendment of statute 203 as proposed on p. 3 ante which provides for empowering the Syndicate to frame Ordinances for admission (a) of students who have satisfied all the requirements of the prescribed courses of studies including the necessary minium attendence but who have not thereafter applied for admission to the matriculation and (b) of students who had been allowed to appear for the examination but wither did not appear for it or failed to pass it as this provision seeks to defeat the very object for which clause (kk) was inserted in section 33(2) of the Bombay University Act, 1928 by Bom 12 of 1928. In this connection Secretry, G.D. has observed that the proposed amendment of statute 203 which attempts to transfer one of the items falling within the scope of a Statute to that of an Ordinance can only be made by amending the Act and not in any way. The R.L.A. XXX is requested to advise. The R.L.A. is also requested to state whether Ordinances Nos. 157E to 157J both inclusive are intra vires the syndicate under section 35 of the Act.

3. clause (kk) of section 33(2) of the Bombay University Act, 1928, provides inter alia that the Senate may make statutes providing for conditions to be complied with by the candidates for the Matirculation Examination whether sent up by recognised schools or not. The proposed amendment of statute 203 seeks to empower the syndicate to frame ordinances for admission (a) of students who have satisfied all the

requirements of the prescribed courses of studies including the necessary minimum attendance but who have not thereafter applied for admission to the matriculation and (b) of students who had been allowed to appear for the examination but either did not appear for it or failed to pass it. It is clear that the proposed amendment is ultravires section 33(2) of the Act. as a Senate is not competent to make statute which seek to empower the syndicate to frame ordinances for certain matters. The scope of the Statutes and Ordinances has been defined by the Act and unless clause (kk) of section 33(2) is transposed as clause (e) of section 35(1) of the Act, the Syndicate would not be competent to frame Ordinances for the purposes specified in the proposed amendment of Statute 203 on p. 3 ante. This view expressed by the Secretary, G.D., in this respect is correct.

4. Since Ordinances Nos. 157E to 157J lay down the conditions to be complied with by candidates for the Matriculation Examination, they are ultra vires the Syndicate under section 35 of the Act.

Sd/- S.W.Dhurandhar.

JPE.13/7/56.4c.

Office of the R.L.A.

Before section 35 of the Bombay University Act, 1928, was amended by Bombay Act 12 of 1928 it gave power to the Syndicate to frame Ordinance for prescribing conditions to be complied with by schools desiring regognition for the purpose of sending up pupils as candidates for the Matriculation Examination and the condition to be complied with by candidates for th Matriculation Examination whether sent by recognised schools or not. This power was given by clause (e) of sub-section (1) of section 35. It was found that the provision gave the Syndicate control over the policy of secondary education, which was not intended. It was consequently decided to amend section 35 so as to transpose the provision in clause (e) of sub-section (1) of section 35 to section 33(2) thereby giving the power to the Senate to make statutes with regard to the matters mentioned in the said clause.(See notes on clauses 3 and 4 in the S.O.R. underlying Bom.XII of 1928). Clause (e) thus became clause (kk) of section 33(2). As the Act now stands it is only the statutes which can provide for matters falling within the purview of clause (kk) of section 33(2). The proposed statute 203 however leaves these matters to the Ordinances and thereby frustrtes the object of the Act. It is therefore ultra vires of the Act. Ordinances Nos. 157E to 157J relate to matters which it is the function of the statutes under section 33(2) to provide rorandare accordingly incompetent.

Id/- P.N.M. 9/11

Remembracer of Legal tAffairs.

U.R. TO E.D., No.8280,

dated 9th November 1943.

JPR.13/7/56.4c.